

## FCC CASES FINDING FAILURE TO MEET NON-CONTINGENT CONTRACT MILESTONE

In all cases involving a satellite licensee's failure to meet a non-contingent construction contract milestone, the FCC found that 1) the licensee had not executed any contract by the milestone deadline; 2) the contract did not contain binding commitments by either manufacturer or licensee to proceed with construction; or 3) the contract contained conditions precedent that prevented commencement of construction. In cases where a contract contained binding commitments by both parties to proceed with construction, the FCC has never scrutinized the sufficiency of those commitments by examining whether the contract provides for a specified amount or number of payments by the licensee or requires specific remedies for contract termination.

Case	Facts & Findings
<i>Constellation Communications Holdings, Inc.</i> , DA 02-3086 (IB rel. Nov. 8, 2002), <i>petition for recon. pending</i> .	FCC denied modification application and milestone extension request, and cancelled Big LEO license.  CCHI did not certify compliance with milestone requiring non-contingent contract for remaining satellites of its system.
<i>Motorola, Inc. and Teledesic, LLC</i> , 17 FCC Rcd 16543 (IB 2002).	FCC denied milestone extension request and cancelled Ka-band FSS license.  Motorola did not execute any contract for construction of first satellite.
<i>Mobile Communications Holdings, Inc.</i> , 17 FCC Rcd 11898 (IB 2002), <i>application for review pending</i> .	FCC affirmed on reconsideration its cancellation of Big LEO license for failure to meet a milestone.  MCHI had a contract for construction of first two satellites, but no contract requiring construction of remaining satellites.  Existing contract stated the parties were to negotiate another contract for construction of remaining satellites at later time, and contained no provision requiring manufacturer to undertake physical construction of remaining satellites.
<i>Astrolink International LLC</i> , 17 FCC Rcd 11267 (IB 2002).	FCC found that Astrolink had not met construction commencement milestone because it had no construction contract in effect at time of milestone deadline.  FCC waived milestone because construction of spacecraft was 90% complete.

<p><i>EchoStar Satellite Corp.</i>, 17 FCC Rcd 12780 (IB 2002), <i>reversed on reconsideration</i>, DA 02-3085 (IB rel. Nov. 18, 2002).</p>	<p>FCC canceled EchoStar's Ka-band FSS license for failure to meet construction commencement milestone.</p> <p>FCC found that construction contract "does not commit the manufacturer to construct a Ka-band subsystem or to guarantee its operation even if constructed." FCC also found that Ka-band system "would be able to operate only under certain limited conditions that may never occur."</p> <p>In a subsequent Nov. 2002 order, FCC reversed cancellation and reinstated license following submission of additional evidence that Ka-band system is under construction and will be operational.</p>
<p><i>Morning Star Satellite Co., LLC</i>, 16 FCC Rcd 11550 (2001).</p>	<p>FCC affirmed IB's cancellation of Ka-band FSS license for failure to meet commencement of construction milestone.</p> <p>Construction contract "contained no terms relating to the contractor's construction schedule, no terms regarding Morning Star's payment schedule, and no terms that indicated a binding commitment for satellite construction."</p> <p>Construction contract was executed after milestone deadline.</p>
<p><i>PanAmSat Licensee Corp.</i>, 16 FCC Rcd 11534 (2001).</p>	<p>FCC affirmed IB's denial of milestone extension request and cancellation of Ka-band FSS license.</p> <p>PanAmSat did not execute any construction contract.</p>
<p><i>NetSat 28 Co. LLC</i>, 16 FCC Rcd 11025 (IB 2001).</p>	<p>NetSat 28 failed to meet construction commencement milestone because it executed construction contract 18 months after milestone deadline.</p> <p>FCC waived milestone and reinstated Ka-band FSS license because NetSat 28's difficulties resulted from prior FCC action.</p>
<p><i>Norris Satellite Communications, Inc.</i>, 12 FCC Rcd 22299 (1997).</p>	<p>FCC affirmed IB's denial of milestone extension request and cancellation of Ka-band FSS license for failure to meet construction commencement milestone.</p> <p>FCC found that contract was contingent because "construction could not begin until a large down payment was made to the satellite manufacturer." Licensee failed to make payment that would have triggered manufacturer's obligation to commence construction.</p>

<p><i>TEMPO Enterprises, Inc.</i>, 1 FCC Rcd 20 (1986).</p>	<p>FCC denied milestone extension request and cancelled National Exchange Satellite, Inc.'s DBS construction permit.</p> <p>National Exchange Satellite did not execute any construction contract.</p>
<p><i>Applications of CBS, Inc.</i>, 99 FCC 2d 565 (1984).</p>	<p>FCC found that "payment and construction schedules appear to depend on payment of a specified cash sum and presentation of letters of credit."</p> <p>Because of special circumstances, FCC declined to cancel DBS permit for failure to meet due diligence milestone, but required Direct Broadcast Satellite Corp. to eliminate contingency by specified date.</p>